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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Debra Sue Sallee,

10 Plaintiff,

11 v.

12 Commissioner of Social Security  
13 Administration,

14 Defendant.

No. CV-17-04504-PHX-DWL

**ORDER**

15 Pending before the Court is the motion for an award of attorneys' fees under 42  
16 U.S.C. § 406(b), (Doc. 23), submitted by Plaintiff's counsel, Mark Caldwell ("Counsel"),  
17 which the Commissioner does not oppose.<sup>1</sup> (Doc. 24 at 2.) Counsel seeks \$27,361.50 in  
18 § 406(b) fees, which does not exceed 25% of Plaintiff's past-due benefits. (Doc. 24 at 1-  
19 2; Doc. 24-1 at 3.)

20 The client-attorney fee agreement provides for a contingency fee—Plaintiff agreed  
21 that the attorneys' fee would be 25% of all past-due benefits awarded to her. (Doc. 24-2  
22 at 2.) This is unsurprising, as 25% contingency fee agreements are nearly ubiquitous in  
23 the context of social security appeals. *Gisbrecht v. Barnhart*, 535 U.S. 789, 802–04  
24 (2002).

25 Section 406(b) "calls for court review" of contingency fee agreements. *Id.* at 807–  
26 08. "Congress has provided one boundary line: Agreements are unenforceable to the

27 <sup>1</sup> The Commissioner "has no direct financial stake in the answer to the § 406(b)  
28 question" because the fees, if granted, will be taken out of Plaintiff's past-due benefits,  
and therefore the Commissioner's role "resembl[es] that of a trustee for the claimants."  
*Gisbrecht v. Barnhart*, 535 U.S. 789, 798 n.6 (2002).

1 extent that they provide for fees exceeding 25 percent of the past-due benefits.” *Id.*  
 2 “Within the 25 percent boundary, as petitioners in this case acknowledge, the attorney for  
 3 the successful claimant must show that the fee sought is reasonable for the services  
 4 rendered.” *Id.*


5 The Court must determine whether it is appropriate to reduce Counsel’s recovery  
 6 “based on the character of the representation and the results the representative achieved”  
 7 by assessing, for example, whether Counsel is “responsible for delay” or whether “the  
 8 benefits are large in comparison to the amount of time counsel spent on the case.”<sup>2</sup> *Id.* at  
 9 808. Counsel included a record of the hours he spent representing Plaintiff. (Doc. 24-3.)  
 10 Having reviewed the timesheet, the Court finds no cause to reduce Counsel’s recovery.

11 Accordingly,

12 **IT IS ORDERED** that Counsel’s Motion for an Award of Attorney Fees under 42  
 13 U.S.C. § 406(b) (Doc. 23) is **GRANTED** in the amount of \$27,361.50.

14 **IT IS FURTHER ORDERED** that Plaintiff’s counsel must refund the lesser of  
 15 the EAJA fee award and the § 406(b) fee award to Plaintiff.

16 Dated this 28th day of April, 2020.

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 21 Dominic W. Lanza  
 22 United States District Judge  
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26 <sup>2</sup> This determination does not equate to use of the lodestar method. *Crawford v.*  
 27 *Astrue*, 586 F.3d 1142, 1149 (9th Cir. 2009) (“The lodestar method under-compensates  
 28 attorneys for the risk they assume in representing SSDI claimants and ordinarily produces  
 remarkably smaller fees than would be produced by starting with the contingent-fee  
 agreement. A district court’s use of the lodestar to determine a reasonable fee thus  
 ultimately works to the disadvantage of SSDI claimants who need counsel to recover any  
 past-due benefits at all.”).